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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No.

ANTHONY ANGELET and WILLIAM ANGELET, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Petitioners, Anthony Angelet and William Angelet, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on March 22, 1956.

Citations to Opinions Below.

The district court did not file an opinion. The opinion of the Court of Appeals printed in the appendix at page 68 et seq., has not yet been officially reported.

Jurisdiction.

The judgment of the Court of Appeals was entered on March 22, 1956, (R. 74). The jurisdiction of this court is invoked under 28 U. S. C., § 1254(1).

Questions presented.

Whether a person who is being illegally arrested may resist the arrest with sufficient force to meet the force of the arresting officer.

The following questions do not, in the opinion of counsel for the petitioners, form a basis for granting a petition for writ of certiorari and will, therefore, not be discussed in this petition. Nevertheless, defendants vigorously contend the Court of Appeals erroneously decided these questions and if a writ of certiorari is granted, they should be decided by this Court in the interest of justice.

Whether various imputations by the prosecution that petitioners had narcotics in their possession at the time of the altercation, without any proof of such possession, was highly prejudicial and constituted reversible error.

Whether the reception into evidence of an indictment and complaint against a third party was highly prejudicial and constituted reversible error.

Whether remarks of the prosecutor during his summation were inflammatory, improper, and prejudicial.

Statement.

Defendants, Anthony Angelet and William Angelet, were indicted and charged with assaulting, resisting, opposing, impeding, intimidating, and interfering with two narcotic agents while the agents were engaged in the performance of their official duties. 18 U. S. C., § 111. (R. 4-6). It was

also charged that during the assault the defendant, William Angelet, used a deadly weapon, to wit, a switch blade knife, and that the defendant, Anthony Angelet, used a deadly weapon, to wit, a finger print roller. (R. 4-6 and 36). A jury found them guilty (R. 45), sentence was imposed (R. 50 and 51), and the Court of Appeals affirmed the conviction (R. 73).

At the trial, the testimony showed that the two narcotic agents approached one of the defendants, William Angelet, on the street around 8:30 in the evening. At this point, the testimony of the two agents conflicts with that of the defendants and the numerous eye witnesses called on their behalf. The agents contend they merely wanted to question William Angelet regarding the whereabouts of a fugitive and that they were assaulted by William Angelet together with his brother, Anthony Anglet (R. 70). The testimony of the defendants and the eye witness shows that the agents were attempting to forcibly arrest William Angelet, and the two defendants were merely resisting the arrest (R. 70). It was not contended by the United States that the agents had a right to arrest William Angelet prior to the altercation, for a warrant had not been issued, a misdemeanor had not been commited in the presence of the officers, and they had no reason to believe the defendants had committed a felony.

The crucial issues for the jury were whether the defendants had the right to resist what they believed was an unlawful arrest and the amount of force which they could use to resist such an unlawful arrest. The defendants submitted to the trial court requests to charge on these issues and the court did charge that a federal officer may

not effect an arrest without a warrant unless a misdemeanor is committed in his presence, or he believes a felony has been committed (R. 35). The court also charged that the defendants had a right to resist an unlawful arrest (R. 35). No charge was given, however, as to the amount of force that the defendants could use to resist an unlawful arrest.

The defendants requested the following charge on the amount of force:

> "11. A Federal officer has no right to violate the rights of a citizen, and a citizen is secure in his person and effects, unless the Federal officer witnessed the commission of a misdemeanor, or had reasonable grounds to believe that a felony had been committed. Should the jury find that a misdemeanor was not committed in the present of the Government witnesses, or that they had no basis upon which to believe a felony had been committed, then they must determine that the defendants had a right to resist unwaranted arrest and could use sufficient force to meet that of the arresting officers to resist their unlawful arrest."

This request was denied. The failure to charge this request was considered by the Court of Appeals, but it held this request to charge *was improper* since "its language and implication is too broad."

Reasons for Granting the Writ.

POINT I.

By misconstruing and misapplying an applicable decision of this Court, the United States Court of Appeals for the Second Circuit has erroneously decided an important question of criminal law dealing with the right to resist an unlawful arrest.

As a result of the trial court's refusal to charge Request No. 11, the jury was not instructed as to the amount of force that could be used to resist an unlawful arrest. Since the indictment charged that during the altercation the defendants used deadly weapons, the jury was without a standard to judge the conduct of the defendants in deciding whether they unlawfully assaulted the narcotic agents in the performance of their official duties or whether the defendants were resisting an unlawful arrest.

The correctness of Request to Charge No. 11 is substantiated by a decision of this Court, as well as a long line of federal and state authorities. In the leading case of *Bad Elk* v. *United States*, 177 U. S. 529 (1900), the defendant had shot and killed an officer who was apparently attempting unlawfully to arrest him. This Court held that if the officer had no right to arrest, then the other party could resist the illegal attempt to arrest, using such force as was absolutely necessary to repel the arrest.

In this case, Request No. 11 was clearly authorized by the *Bad Elk* case. To use *sufficient force to resist the force of arresting officers* is synonymous with *using such force*

as is necessary to resist the force of arresting officers. If the defendants used more than sufficient force to resist the force of the arresting officers, they would have been using more force than is necessary or absolutely necessary to repel the arrest. If the defendants had been using less than sufficient force to resist the force of the arresting officers, they would have been using less force than is necessary or absolutely necessary to repel an arrest. "Necessary" implies the superlative and the addition of the epithet "absolutely" does not change the essential meaning of the word "necessary." *Commonwealth* v. *Morrisson,* 9 Ty. (2A Marsh), 75, 85.

The Court of Appeals, however, held that the language and implication of defendants' Request to Charge No. 11 were too broad. The Court of Appeals repeated the language of the *Bad Elk* case, namely, one can use such force as is absolutely necessary to resist illegal arrest, but then interpreted this language as follows:

> "Defendants would have been entitled to use such force as was 'absolutely necessary' to resist illegal arrest. Bad Elk *v.* United States, 177 U. S. 529; see also Brown *v.* United States, 159 U. S. 100. This is equivalent to saying, since the right to resist unlawful arrest is a phase of the right of self-defense, that the use of 'reasonable force' only would have been open to defendants. See Wilkinson *v.* State, 143 Miss. 324, 108 So. 711, 46 A. L. R. 895; State *v.* Francis, 152 S. C. 17, 149 S. E. 348, 70 A. L. R. 1133." (R. 72).

What is "reasonable force"? Since the Court of Appeals held that defendants' Request No. 11 was too broad,

reasonable force must be less force than is sufficient to meet the force of an arresting officer. Under *Bad Elk*, such is not the law.

It is respectfully submitted the Court of Appeals has emasculated the rule laid down by this Court in *Bad Elk*, supra.

The right of an individual to defend himself against police brutality should not be whittled away. The decision of this Court in *Bad Elk*, supra, correctly sets out the law throughout the country with respect to the amount of force that can be used in resisting an unlawful arrest.

In *People* v. *Doody*, 343 Ill. 194, 175 N. E. 436 (Sup. Ct. of Ill. 1931), a jury in a homicide case was not informed as to the degree of force the defendant might use if he believed that an unlawful arrest was being attempted. The Supreme Court of Illinois held this was reversible error and stated: "An officer making an arrest without a warrant and without the authority conferred by statute to arrest without a warrant is a trespasser and a person whom he attempts to arrest may resist with all the force necessary to repel his efforts."

The Supreme Court of Mississippi in *Hinton* v. *Sims*, 158 So. 141 (Sup. Ct. of Miss. 1934) held that a man had a right to resist an unlawful arrest and in so doing could use "the necessary force to meet force."

The Supreme Court of South Carolina in *State* v. *Francis*, 149 S. E. 348 (Sup. Ct. of S. C. 1929) held that a man in resisting an unlawful arrest could use so much force as is apparently necessary to prevent the arrest.

POINT II.

The decision of the court below directly conflicts with a decision of the Court of Appeals for the Fifth Circuit.

In the case of *Brown* v. *United States,* 47 F. 2d 681 (CA 5 1931), the defendant was indicted for assaulting an officer with a deadly weapon for the purpose of deterring that officer from discharging his official duties. The defendant requested the court to charge that if the jury found an unlawful arrest was being attempted, the defendant had a right to resist it and for that purpose "defendant was at liberty to use such force as was at his command and necessary to prevent said arrest." The trial court refused this request to charge and was reversed by the Court of Appeals, which held that the requested charge was proper under *Bad Elk, supra,* and other federal and state decisions. The case is on all fours with the instant case. Certainly there is no distinction between "such force as is necessary to prevent an arrest" and "such force as is sufficient to meet the force of an arresting officer."

This conflict among Fifth Circuit and the Second Circuit Court of Appeals over an important principle of Federal Criminal Law, namely, the right of an individual to resist unlawful encroachments upon his person by Government officials should be settled by this Court.

Conclusion.

In view of the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Anthony Angelet and
William Angelet.

ABRAHAM SOLOMON,
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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 871

ANTHONY ANGELET AND WILLIAM ANGELET,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 68–73) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 22, 1956 (R. 74). The petition for a writ of certiorari was filed April 17, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the trial court, which had charged the jury that petitioners could use such force as was necessary in self-defense and that they had a right to resist unlawful arrest, committed reversible error in refusing to give a requested charge that petitioners could use sufficient force to meet that of the arresting officers.

STATUTE INVOLVED

18 U. S. C. 111 provides:

> Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.
>
> Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

STATEMENT

A six-count indictment charged petitioners with having violated 18 U. S. C. 111 by assaulting and interfering with two narcotic agents while they were engaged in the performance of official duties, and by using deadly weapons during the assault (R. 4–6). A jury found them guilty on all counts (R. 45) and each was sentenced to concurrent sentences of five years imprisonment on

the counts in which he was named (R. 49, 50–51). On appeal, the convictions were affirmed (R. 75).

The evidence adduced by the government was that the two narcotic agents approached William Angelet, and sought to question him regarding a fugitive (R. 54–55, 60–61). Instead of answering or refusing to answer the question, William called to Anthony Angelet, who, upon arrival on the scene, immediately assaulted one of the agents (R. 55, 61–63). While the two agents were attempting to subdue Anthony, William also attacked an agent, and produced a knife in the ensuing scuffle (R. 55, 62). The agents took petitioners into a bar and another attack occurred (R. 56–58, 63–64). Subsequently, at the Bureau of Narcotics there was another scuffle (R. 59–60, 66–67).

Petitioners' evidence was to the effect that the agents were attempting to arrest William, that petitioners were merely resisting the arrest, and that any acts of violence committed by them were performed in self-defense (See R. 37). They denied the use of deadly weapons (R. 37).

The issue presented to this Court by petitioners concerns the district court's charge to the jury on petitioners' defense that any acts of violence on their part were done while they were resisting unlawful arrest (Pet. 5–8). The trial judge first explained to the jury the petitioners' right to self-defense (R. 33):

> The defendants here contend, by their plea of not guilty and by their testimony

> on the witness stand, that they did not assault, resist, oppose, impede, intimidate or interfere with the federal officers in the performance of their duties, and that any acts of force or violence committed by them were performed in self-defense. If the defendants had reasonable cause to believe by the words, acts or conduct of the federal agents that they had a design—that is, the federal agents had a design to do either of them bodily injury, and that such design was about to be accomplished, then the defendant had a right to act on all appearances and *to use such force that to them seemed necessary to prevent such injury.* * * * [Emphasis added.]

He then read to the jury petitioners' request Number 12 for a charge in regard to their right to resist unlawful arrest, as follows (R. 35):

> A federal officer has no right to effect an arrest without a warrant unless a misdemeanor is committed in his presence or there is some basis for reasonable ground for him to believe that a felony had been factually or actually committed in his absence, and if the jury believes that the Government has failed to prove the commission of any crime, then the defendants had a right to resist arrest.

Exception was noted by petitioners (R. 39) to the trial judge's refusal to give their requested charge Number 11 (R. 26), which included a statement touching upon the amount of force they

could lawfully use in resisting illegal arrest, as follows:

> A Federal officer has no right to violate the rights of a citizen, and a citizen is secure in his person and effects, unless the Federal officer witnessed the commission of a misdemeanor, or had reasonable grounds to believe that a felony had been committed. Should the jury find that a misdemeanor was not committed in the presence of the Government witnesses, or that they had no basis upon which to believe a felony had been committed, then they must determine that the defendants had a right to resist unwarranted arrest and could use sufficient force to meet that of the arresting officers to resist their unlawful arrest.

The Court of Appeals found that petitioners' request for charge Number 11 was properly refused, as its language and implication were too broad in saying that petitioners might use "sufficient force" to resist unlawful arrest (R. 73). It further found that petitioners' request for charge Number 12 on the right to resist unlawful arrest, as given, was more favorable to petitioners than necessary, but that it did adequately set forth the theory of the defense (R. 73).

ARGUMENT

1. Petitioners' contention that the trial judge committed reversible error in failing to charge the jury as to the amount of force which petition-

ers could use to resist unlawful arrest (Pet. 5) ignores the earlier part of the charge in which the judge explained petitioners' claim to be that they acted in self-defense and that they had the right to use such force in self-defense as seemed necessary (*supra*, pp. 3–4). There was no need to repeat this standard of force when the judge gave the specific charge that petitioners had the right to resist illegal arrest, since, as noted by the court below (R. 73), "the right to resist unlawful arrest is a phase of the right of self-defense," and the district judge made it clear, *supra*, pp. 3–4, that the claim of self-defense was part of petitioners' defense that they were not guilty of resisting the officers. Cf. *Wilkinson* v. *State*, 143 Miss. 324, 103 So. 711, 712.

Petitioners themselves argue that there is no distinction between such force as is "necessary" and such force as is "sufficient" (Pet. 5–6). Hence the district court's earlier charge that "necessary" force could be used made superfluous the charge requested by petitioners that "sufficient" force could be used.

As the Court of Appeals pointed out, the language of petitioners' request Number 11, *i. e.*, "sufficient force to meet that of the arresting officers," was too broad. The test of the right to resist illegal arrest established by this Court in *John Bad Elk* v. *United States*, 177 U. S. 529, on which petitioners rely (Pet. 5–7), is "such force as was absolutely necessary". The stand-

ard of "necessary" force[1] which the judge used in charging the jury in this case (see *supra*, p. 4) was therefore the correct standard, and petitioners were entitled to no more favorable charge than the trial court gave.

2. Petitioners' contention (Pet. 7, 8) that the decision of the court below conflicts with the decision of this Court in *John Bad Elk* v. *United States*, 177 U. S. 529 and with the decision of the United States Court of Appeals for the Fifth Circuit in *Brown* v. *United States*, 47 F. 2d 681, is without substance. Each of those cases was reversed because the trial judges, respectively, had, in effect, instructed the jury that the defendant had no right at all to resist unlawful arrest. In the *Bad Elk* case this Court clearly recognized the established rule to be that only such force as is absolutely necessary may be used to resist an illegal arrest (177 U. S. at pages 535 and 537). And in the *Brown* case, the Court of Appeals for the Fifth Circuit placed its stamp of approval on a requested instruction that such force as is necessary to prevent an illegal arrest may be used (47 F. 2d at page 681–682). Since, in the instant case, there was an instruction on the right to resist illegal arrest which was equivalent to the rule recognized by this Court in the *Bad Elk* case, the decision below is clearly correct and presents no conflict with the decision of this

[1] Petitioners concede that the use of the word "absolutely" does not change the meaning of the word necessary (Pet. 6).

Court in that case, or with the decision of the Court of Appeals for the Fifth Circuit in the *Brown* case.[2]

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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MAY 1956.

[2] The other questions raised but not argued (Pet. 2) were considered and properly rejected by the court below (R. 71–72) in the application of settled principles to the facts of this case.

U. S. GOVERNMENT PRINTING OFFICE: 1956